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PROCEEDINGS

OF THE

American Society of International Law

AT ITS

TENTH ANNUAL MEETING

HELD AT

WASHINGTON, D. C.

APRIL 27-29, 1916

BYRON S. ADAMS, PRINTER

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1916

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THE AMERICAN SOCIETY OF INTERNATIONAL LAW



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CONSTITUTION
OF THE
AMERICAN SOCIETY OF INTERNATIONAL LAW¹

ARTICLE I

Name

This Society shall be known as the American Society of International Law.

ARTICLE II

Object

The object of this Society is to foster the study of International Law and promote the establishment of international relations on the basis of law and justice. For this purpose it will coöperate with other societies in this and other countries having the same object.

ARTICLE III

Membership

Members may be elected on the nomination of two members in regular standing by vote of the Executive Council under such rules and regulations as the Council may prescribe.

Each member shall pay annual dues of five dollars and shall thereupon become entitled to all the privileges of the Society, including a copy of the publications issued during the year. Upon failure to pay the dues for the period of one year a member may, in the discretion of the Executive Council, be suspended or dropped from the rolls of membership.

¹The history of the origin and organization of the American Society of International Law can be found in the Proceedings of the First Annual Meeting at p. 23.

The Constitution was adopted January 12, 1906.

Upon payment of one hundred dollars any person otherwise entitled to membership may become a life-member and shall thereupon become entitled to all the privileges of membership during his life.

A limited number of persons not citizens of the United States and not exceeding one in any year, who shall have rendered distinguished service to the cause which this Society is formed to promote, may be elected to honorary membership at any meeting of the Society on the recommendation of the Executive Council. Honorary members shall have all the privileges of membership, but shall be exempt from the payment of dues.

ARTICLE IV

Officers

The officers of the Society shall consist of a President,² nine or more Vice-Presidents, the number to be fixed from time to time by the Executive Council, a Recording Secretary, a Corresponding Secretary, and a Treasurer, who shall be elected annually, and of an Executive Council composed of the President, the Vice-Presidents, *ex officio*, and twenty-four elected members, whose terms of office shall be three years, except that of those elected at the first election eight shall serve for the period of one year only and eight for the period of two years, and that any one elected to fill a vacancy shall serve only for the unexpired term of the member in whose place he is chosen.

The Recording Secretary, the Corresponding Secretary and the Treasurer shall be elected by the Executive Council from among its members. The other officers of the Society shall be elected by the Society, except as hereinafter provided for the filling of vacancies occurring between elections.

At every annual election candidates for all offices to be filled by the Society at such election shall be placed in nomination by a Nominating Committee of five members of the Society previously appointed by the Executive Council, except that the officers of the first year shall be nominated by a committee of three appointed by the Chairman of the meeting at which this Constitution shall be adopted.

All officers shall be elected by a majority vote of members present and voting.

All officers of the Society shall serve until their successors are chosen.

²See Amendments, Article 1, p. x.

ARTICLE V

Duties of Officers

1. The President shall preside at all meetings of the Society and of the Executive Council and shall perform such other duties as the Council may assign to him. In the absence of the President at any meeting of the Society his duties shall devolve upon one of the Vice-Presidents to be designated by the Executive Council.

2. The Secretaries shall keep the records and conduct the correspondence of the Society and of the Executive Council and shall perform such other duties as the Council may assign to them.

3. The Treasurer shall receive and have the custody of the funds of the Society and shall disburse the same subject to the rules and under the direction of the Executive Council. The fiscal year shall begin on the first day of January.

4. The Executive Council shall have charge of the general interests of the Society, shall call regular and special meetings of the Society and arrange the programs therefor, shall appropriate money, shall appoint from among its members an Executive Committee and other committees and their chairmen, with appropriate powers, and shall have full power to issue or arrange for the issue of a periodical or other publications, and in general possess the governing power in the Society, except as otherwise specifically provided in this Constitution. The Executive Council shall have the power to fill vacancies in its membership occasioned by death, resignation, failure to elect, or other cause, such appointees to hold office until the next annual election.

Nine members shall constitute a quorum of the Executive Council, and a majority vote of those in attendance shall control its decisions.

5. The Executive Committee shall have full power to act for the Executive Council when the Executive Council is not in session.

6. The Executive Council shall elect a Chairman, who shall preside at its meetings in the absence of the President, and who shall also be Chairman of the Executive Committee.

ARTICLE VI

Meetings

The Society shall meet annually at a time and place to be determined by the Executive Council for the election of officers and the transaction of such other business as the Council may determine.

Special meetings may be held at any time and place on the call of the Executive Council or at the written request of thirty members on the call of the Secretary. At least ten days' notice of such special meeting shall be given to each member of the Society by mail, specifying the object of the meeting, and no other business shall be considered at such meeting.

Twenty-five members shall constitute a quorum at all regular and special meetings of the Society and a majority vote of those present and voting shall control its decisions.

ARTICLE VII

Resolutions

All resolutions which shall be offered at any meeting of the Society shall, in the discretion of the presiding officer, or on the demand of three members, be referred to the appropriate committee or the Council, and no vote shall be taken until a report shall have been made thereon.

ARTICLE VIII

Amendments

This Constitution may be amended at any annual or special meeting of the Society by a majority vote of the members present and voting. But all amendments to be proposed at any meeting shall first be referred to the Executive Council for consideration and shall be submitted to the members of the Society at least ten days before such meeting.

AMENDMENT

Article 1³

Article IV is hereby amended by inserting after the words "The officers of the Society shall consist of a President," the words "an Honorary President."

³This amendment was adopted at the business meeting held April 24, 1909.

REPORT OF THE COMMITTEE ON NOMINATIONS

The Committee on Nominations respectfully reports the following nominations for the year 1916-1917:

For President: Honorable Elihu Root.

For Vice-Presidents:

Hon. Robert Bacon.	Hon. Robert Lansing.
Mr. Andrew Carnegie.	Hon. Henry Cabot Lodge.
Hon. Joseph H. Choate.	Hon. John Bassett Moore.
Justice William R. Day.	Hon. William W. Morrow.
Hon. Jacob M. Dickinson.	Hon. Richard Olney.
Hon. John W. Foster.	Hon. Horace Porter.
Hon. George Gray.	Hon. Oscar S. Straus.
Hon. P. C. Knox.	Hon. William H. Taft.

Chief Justice White.

For Members of the Executive Council to serve until 1919:

Hon. John Barrett, District of Columbia.
 Hon. Frank C. Partridge, Vermont.
 Prof. Leo S. Rowe, Pennsylvania.
 F. R. Coudert, Esq., New York.
 Everett P. Wheeler, Esq., New York.
 Alpheus H. Snow, Esq., District of Columbia.
 Prof. William R. Manning, Texas.
 Prof. John H. Latané, Maryland.

For Member of the Executive Council to serve until 1918 to fill the vacancy caused by the election of the Honorable John Bassett Moore to the Vice-Presidency: Hon. David Jayne Hill, of New York.

(Signed) ANDREW J. MONTAGUE, *Chairman*.

(Signed) PHILIP BROWN.

(Signed) JAMES W. GARNER.

(Signed) CHARLES NOBLE GREGORY.

(Signed) GEORGE G. WILSON.

The CHAIRMAN. Gentlemen, you have heard the report of the committee. What is the pleasure of the Society?

Professor PHILIP MARSHALL BROWN. I move that it be adopted.

(There were several seconds.)

The CHAIRMAN. You have heard the motion, gentlemen. Is there any discussion?

(There was no discussion and the motion was duly put and carried.)

The CHAIRMAN. The report of the committee has been accepted and the gentlemen nominated are duly elected.

Mr. SCOTT. There is another little matter still outstanding, namely, two letters which have been received from Professor Gordon S. Sherman, of Yale University, who had hoped to be present with us and take part in the proceedings. He has expressed his opinion on two subjects which have been discussed and has asked that his letters be incorporated in the proceedings.

I therefore move that authority be given to incorporate the letters dealing with those subjects in their proper place in the proceedings.

(There were several seconds and the motion was duly carried.)

LETTERS FROM PROFESSOR GORDON E. SHERMAN, OF YALE UNIVERSITY

MORRISTOWN, NEW JERSEY,
April 20, 1916.

DEAR PROFESSOR SCOTT:

I much regret to say that an attack of grip last month has left me with a sensitive throat which, for the moment, renders much speaking difficult and imprudent. It does not seem wise, therefore, to contemplate a trip to Washington and participation in the meeting of the Society of International Law next week. I had hoped to have somewhat developed the thought expressed by Renault at the London Conference touching the question of penalizing a fleeing merchantman, a question of importance in view of the claim that the merchantman can be torpedoed at will: "S'il est constaté qu'il a, d'une façon quelconque, violé ses devoirs de neutre, il subira les conséquences de son infraction à la neutralité, mais il ne subira non plus une peine pour avoir tenté la fuite," etc. It would seem fitting that the Society confirm the majority opinion of the Naval Conference as expressed in the report of Renault on this point. Possibly it is intended to be covered in some address, or, if not, it may be taken up should I not be able to be present. I have not noticed any mention of the point in the various discussions of submarine matters, and venture, therefore, to suggest it to you. That a merchant vessel, armed or unarmed, should be torpedoed for attempting flight without active resistance would appear a wholly untenable position.

Believe me, always sincerely yours,

(Signed) GORDON E. SHERMAN.

DR. JAMES BROWN SCOTT,
Washington.

MORRISTOWN, NEW JERSEY,
April 25, 1916.

DEAR PROFESSOR SCOTT:

I have your very kind note of yesterday and am glad to know that you approve a discussion of the lawfulness of instantly sinking, by torpedo, a merchant ship endeavoring to escape, but not forcibly resisting stoppage. The General Report upon the Declaration of London very properly assumes that "if the merchant vessel is damaged or sunk" (through exercise of force designed to stop it) "she has no right to complain, etc.," but sinking, where an effort is merely directed at halting a ship, must radically differ from the launching of a torpedo whose practically sole purpose is the immediate destruction of the vessel with all on board. There would seem to be a wide distinction between the duty of a patrolman to learn the intentions of a solitary pedestrian encountered late at night and under reasonably suspicious circumstances, and the instant effort of the officer to murder without a moment's delay, should the suspected individual decline a parley. The argument in the *San Juan Baptista* (5 Chr. Robinson, 33) while not directly in point, favors the conclusions I have suggested. I greatly regret my inability to go to Washington this week and shall hope to find in the newspapers, at least, an account of the Conference.

Believe me, always faithfully yours,

(Signed) GORDON E. SHERMAN.

DR. JAMES BROWN SCOTT,
Washington.

MR. SCOTT. That finishes the business necessary to be considered.

THE CHAIRMAN. Is there anything that any member of the Society desires to present at this time?

PROFESSOR BROWN. I was much interested in the remarks of Mr. Kuhn, because it seems to me he has pointed out a duty which we have heretofore ignored, that of giving proper consideration to jurisprudence in its widest sense, as the source of the principles of international law. This seems to me to be particularly apparent in the field of private international law and to be more definite still in our relations with Central and South America. It seems to be an unfortunate tendency in common law countries to stress the idea of territorial sovereignty and to ignore the point of view of other countries. You are all familiar with the fact that frequently it is stated in our common law courts, that if the point of view of other countries is accepted it is accepted as *comitas gentium*. It seems to me that, as a society, we should seriously endeavor to investigate and to facilitate the study of these wide differences in jurisprudence in order that questions which have heretofore

been treated as *comitas gentium* should be based more soundly on universal rights. I am not quite prepared to make a definite suggestion as to how we could do that, but I can indicate at this time a possible step that this Society might take that would assist us in attaining that object. It has occurred to me that we might possibly institute a summer school of international law where those who are particularly interested in that subject could gather together for a few weeks, say six weeks, where distinguished men from abroad, from Europe and South America, could be invited to lecture to us on just such topics as Mr. Kuhn has indicated; where our own public men of distinction could lecture, not only on questions of international law, but questions of international relations. It may be there will be considerable difficulty in the evolution of such a scheme, but it has appealed to me strongly as affording a possible means of disseminating in this country, through leaders of thought in international law and international relations, more definite knowledge on the subject; and I express here the hope that the Society may promptly take up the consideration of some such proposition.

Before taking my seat, I would like to make a definite motion on that subject at this time. It seems to me that this session of the Society has been most gratifying as an indication of the possibility of constructive work. In other words, that we are evolving from the stage of publicity and popularization and of awakening general interest in the subject, and are now approaching the serious duty of the construction of international law. I am sure that the discussion we have had here at this time has made us all feel that there is a serious duty incumbent on this Society to do something to formulate rules of international law to meet actual conditions. If we will stop a moment to consider, we will see that the work is stupendous. It seems that we have made a great step forward this year in having this procedure of one subject and two speakers to a session. It has enabled us, it seems to me, to reach more definite conclusions than we have been able to reach before.

It seems to me we can, in subsequent years, make more definite progress in procedure, and I would suggest that next year in arranging the program for this Society it be arranged sufficiently far ahead so that those who are to participate will be in a position to get together and formulate a definite proposition to sustain on the subject at issue, and that these propositions be worded in the form of resolutions to be

sent out to all the members of the Society, so that we could all come here prepared to discuss them, after being given opportunity to study the different propositions, and be prepared to vote upon them.

I therefore make the suggestion, as indicated, that the next meeting have its program prepared sufficiently in advance so that those who will participate will formulate their views in the form of resolutions, to be submitted to all the members of the Society sufficiently ahead of time to enable us to discuss, and, if possible, to reach a definite conclusion upon them after discussion.

The CHAIRMAN. Do you make that as a motion, Professor Brown?

Professor BROWN. Yes; I make that as a motion.

(The motion was seconded.)

Mr. SCOTT. I would like to make some observations on Professor Brown's motion. In the first place, I think nothing is more calculated to increase intelligent interest in international law than the organization of some such meeting as he suggests, which might be in the form of a summer school. I should think, however, that we should in the beginning limit ourselves to lecturers from our own country and that when we try an experiment we try it upon a somewhat smaller scale. If it is justified, we can then consider how we can expand it. That, Mr. Chairman, is one of the reasons why I was very careful in using the words law and jurisprudence in speaking of international law, because if it be taught as a part of law or as a system of law and as a part of jurisprudence, it necessarily follows that related subjects will be considered. I am not in a position to do more than say that I heartily approve of the suggestion, and if a method is devised for carrying it out I shall endeavor to secure its realization by having it aided by the Division of International Law of the Carnegie Endowment.

With regard to the second proposition, I would also approve of that, but I would ask that next year it be tried likewise on a very modest scale, because what it means is that we should appoint, either at the annual meeting, or authorize the President or appropriate officer of the Society to appoint committees to study and investigate, consider and present reports which would be printed and transmitted by the Society to its members. In this embryonic form you see an institute of interna-

tional law comparable to the institution established in Europe in 1873 and which has rendered such distinguished service. I would suggest that this matter be taken up, as Professor Brown has suggested, but that it be tried under the most favorable circumstances, namely, that only one subject be selected, and that the experiment also be tried with the members of the committee; that if it be decided to have a committee formed for the consideration of this question, the committee consult together in order that we might see, as the result of that experiment, whether it is feasible and whether it should be extended to all of our program. I might suggest, in this connection, that while it might increase very much our efficiency it would nevertheless require something of an outlay. It might be well to consider the matter in advance so that no undue drain be made upon our limited resources.

With these slight suggestions, I approve the two resolutions and, as I said before, I shall endeavor to secure the practical realization of a summer school in international law.

Mr. BUTLER. There are two resolutions before us. The first is with reference to the summer school, and the second with reference to the program. It seems to me the first resolution, with regard to a summer school, should be referred to the Standing Committee on the Study and Teaching of International Law and Related Subjects for consideration. I would be very glad if some way could be found for carrying out Professor Brown's suggestion.

With regard to the other suggestion, I think that the question of the program should be referred to the Committee on Program, of which I think Professor Brown is a member.

The CHAIRMAN. Do you make that suggestion as a motion?

Mr. BUTLER. Yes; I make that as a motion to refer.

The CHAIRMAN. Is that motion seconded?

(There were several seconds.)

The CHAIRMAN. The motion is that the two resolutions be referred to those respective committees.

(The motion was duly put and carried.)

Mr. SOTERIOS NICHOLSON. I desire to bring before the Society a resolution which I desire to be referred to a committee, if the Chairman desires to refer it.

Mr. GREGORY. I move that that resolution be referred to the Executive Council.

(The motion was duly seconded and carried.)

Mr. NICHOLSON. May I submit a few words to the Society? It will only take ten minutes.

Mr. WHEELER. I suggest that Mr. Nicholson's paper be referred to the Executive Council where it will receive careful consideration. It is not a matter that we can dispose of this morning, as there is other business to be taken up.

The CHAIRMAN. The Chairman will rule that that is the proper procedure.

Mr. NICHOLSON. May I leave these remarks with the Secretary to be incorporated in the proceedings? Is there any objection to that?

Mr. GREGORY. They could be left with the Secretary to be submitted to the Executive Council.

The CHAIRMAN. If there is no objection, the Chair will rule that the papers may be submitted to the Secretary and referred to the Executive Council with the rest of the material submitted by Mr. Nicholson.

If there is no further business before the Society, it will now stand adjourned.